Office of the OMBUDSMAN

Report

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Ombudsman Report

An Investigation into the
Parking Ticket Dispute System in Toronto

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Ombudsman

TORONTO

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1.0 Executive Summary

The Toronto Office of the Ombudsman has received a sizeable number of complaints from parking ticket recipients about the information available to the public and the adequacy of the process for disputing parking tickets.

These recipients alleged that the parking infraction notice does not provide adequate information about avenues of recourse; the City unfairly requires recipients to attend in person if they wish to request a trial; service at the City's Parking Tag offices is inadequate; and trials are not provided on a timely basis.

Complainants stated that the parking infraction dispute process seemed designed to encourage payment and discourage those with disputes from pursuing them.

On December 21, 2011, the Ombudsman initiated an investigation on her own motion in order to fully examine the fairness and accessibility of the City's process for handling parking infraction disputes.

The investigation revealed that the current dispute process provided reasonable service to recipients, given demand and available resources. The Ombudsman also learned that the City was taking steps to enhance service provision.

The Ombudsman found, however, that there were ways in which the existing system could be improved.

The information that appears on the parking infraction notice downplays the trial option and gives no indication that tickets are in some cases cancellable without attendance in court.

The information on the City's website highlights the payment option over the trial option and does not provide adequate information about other avenues through which recipients' concerns may be raised.

The City of Toronto Parking Ticket Cancellation Guidelines are not accessible. The general public is not aware of them.

Staff at Parking Tag Operations offices can respond to recipients' queries about parking tickets and are authorized to cancel tickets as provided by the Guidelines. However, unless they are directly asked, staff do not offer any advice prior to filing the recipient's trial request on whether the ticket is one that is covered by the Cancellation Guidelines.

The Ombudsman concluded that the in-person appearance requirement was not unreasonable. However, it applies to the filing of the trial request. It is not necessary that all communication with a disputant prior to trial be in person.

The City has for some time been unable to accommodate all parking ticket trial requests, and has found it necessary to prioritize cases when scheduling court dates. It is pursuing initiatives to address capacity limitations, including the introduction of a fixed fine parking ticket system and a delivery/courier parking permit.

The City has given some consideration to implementing an administrative penalty system for dealing with parking ticket disputes. This approach would remove parking ticket disputes from the courts. The City has not moved forward, in part because it believes the administrative system could be vulnerable to a court challenge.

The Ombudsman recommended that the City improve the service provided to parking ticket recipients by:

- Expanding and clarifying the information on challenging a ticket that is available on the infraction notice, on the City website and at the Parking Tag offices;

- Further expanding the use of telephone, email and fax contact to explore ticket issues raised by disputants where an in-person appearance is not required;

- Requiring staff at Parking Tag Offices to identify and assist individual ticket recipients whose issues do not require appearance in court;

- Proceeding with initiatives that are designed to reduce unwarranted requests for trial. These would include the introduction of the fixed fine system and a courier/delivery parking permit;

- Addressing the concern about a court challenge of an administrative penalty process for dealing with parking ticket disputes, by requesting the Attorney General refer the issue to the Court of Appeal.

2.0 The Complaint

1. My office has received many complaints from residents about the fairness and transparency of the parking enforcement system.

2. Complainants raised a number of issues relating to the adequacy of information available to the public following receipt of a parking ticket; the accessibility of the dispute process; and the time taken for disputes to be heard.

3. Complainants informed my office that:

- the information regarding what may be disputed, and how, is not clear on the infraction notice;
- the requirement to appear in person to request a court hearing is unreasonable;
- service and assistance at the City's First Appearance Facilities often entail a long wait and are inadequate; and
- disputes are not heard by the court until months or even years after the issuance of the notice, and sometimes not at all.

4. Complainants stated that, based on their experience, the City's parking infraction dispute process appears to be deliberately designed to maximize revenue, by making it quick and convenient to pay parking fines, but inconvenient, time-consuming and frustrating to dispute the infraction notice.

3.0 The Investigation

5. I initiated an investigation on my own motion in order to fully examine the fairness and accessibility of the City's current process for responding to parking infraction disputes.

6. The notice of intent to investigate was issued on December 21, 2011.

7. My investigator interviewed employees of Revenue Services, Court Services, Legal Services, representatives of other municipal governments and the complainants. Applicable legislation, policies, procedures and guidelines were reviewed.

4.0 The Issues

8. The investigation considered the adequacy of:

(i) the information available to members of the public to explain how they may respond to a parking infraction notice;

(ii) the procedures in place at First Appearance Facilities;
(iii) the process to hear parking infraction disputes in court;
(iv) the time required to complete these processes.

5.0 Toronto Parking Program

5.1 Regulation

9. The City of Toronto restricts parking on city streets in order to regulate movement of traffic, maintain traffic flow and ensure safe streets. These restrictions are set out in the City's parking bylaws.

5.2 Enforcement

10. Bylaw restrictions are enforced by the Toronto Police Service (TPS), through the Parking Enforcement Unit. Its Parking Enforcement Officers issue the majority of parking tickets. A small number are issued by Municipal Law Enforcement Officers who are trained and certified by the TPS to issue parking tickets on private and municipal property.

11. The City issues approximately 2.8 million parking tickets per year, generating revenue of about $80 million. The bulk of these tickets carry set fines between $30 and $60. The fine for parking in a parking space designated for drivers with disabilities is $450. Tickets are required to be affixed to the vehicle or accepted by the vehicle operator at the time and location of the alleged bylaw infraction.

5.3 Information Available to the Public

12. Following receipt of a parking ticket the recipient may:

1) pay the ticket;
2) contact the general enquiry number if the issue involves errors on the notice, stolen vehicles, accessible parking permits or persons living more that 100 kilometres from Toronto;
3) submit concerns or questions that involve the operation of a pay-and-display machine or parking meter offence to the City by email or fax;
4) dispute the ticket.

13. The City informs the public about these options through the information on the infraction notice, on the parking tags general enquiry line – 416-397-TAGS (8247), through its website and at its First Appearance Facilities.

5.3.1 Parking Infraction Notice

14. The back of parking infraction notices contain the following text:

IMPORTANT NOTICE – PLEASE READ CAREFULLY
DO NOT take this notice to a police station

'If you do not pay the voluntary payment amount if one is shown on the front of the notice within seven days, OR pay the set fine amount within 15 days, OR if you do not deliver a Notice of Intention to Appear in Court within 15 days at one of the locations listed OR if you do not appear for your trial, you will be deemed not to dispute this charge and a conviction may be entered against you. Upon conviction you will be required to pay the set fine plus court costs. An administrative fee is payable if the fine goes into default. The information may be provided to a credit bureau and/or a collection agency, if the appropriate amount is not received within the prescribed time.

Notice to Ontario Motorists
Failure to pay the fine imposed upon conviction will result in your Ontario Vehicle Permit not being renewed and no new permit being issued to you until the fine and all court costs and fees have been paid.

You MUST CHOOSE ONE of the following options:
If you choose the payment option, sign where indicated.
Clearly indicate amount paid in box on the bottom of this section.

□ **Option 1 – is available only if a Voluntary Payment amount is shown on the front of this notice.**
Must be received within 7 calendar days of the date of issue.
I do not wish to dispute the charge and I enclose the voluntary payment amount indicated for the offence on the front of this Notice.

□ **Option 2 – Set Fine Payment**
Must be received within 15 calendar days of the date of issue.
I do not wish to dispute the charge and I enclose the fine amount amount indicated for the offence on the front of this Notice.

_____
Signature

Write the number of the Parking Infraction Notice on the front of your cheque or money order and make it payable to: ***Parking Tag Operations, City of Toronto****. Dishonoured cheques may be subject to an administrative charge.*

Payment by Touchtone Telephone (an administrative charge may be levied)
VISA, MASTERCARD and AMERICAN EXPRESS accepted – 416-397-TAGS (8247)

Payment by Mail (do not send cash)
City of Toronto, Parking Tag Operations
Box 4282, Station A
Toronto, Ontario M5W 5W5

Payment in Person *(a service charge may be levied)*
Parking Tag Operations will accept payment at all of the locations listed below.

Payment On-Line (an administrative charge may be levied) or for parking ticket information visit www.toronto.ca/parkingtickets
VISA, MASTERCARD and AMERICAN EXPRESS accepted

Amount Paid _____

Please note, payment cannot be accepted at financial institutions.

Option 3 –Trial Option – You CANNOT set a trial date by mail.
If you are requesting a trial or wish to dispute the issuance of the Parking Infraction Notice, you or your representative must bring this notice to one of the following locations within the City of Toronto, within 15 days.

Parking Tag Operations*
55 John Street, 3rd Floor (King St. W. & John Sr.)

Parking Tag Operations East*
1530 Markham Road, Ground Floor (Markham Rd. and Milner Ave.)

Parking Tag Operations West*
York Civic Centre
2700 Eglinton Ave. West, Ground Floor (West of Keele St.)

Parking Tag Operations North*
North York Civic Centre
5100 Yonge Street, Ground Floor (5 blocks north of Sheppard Ave.)

Hours of Operation at Above Locations:
Monday-Friday *8:30 am. – 4:30 pm.*

- *Closed Statutory and Civic Holidays.*

All locations Accessible.

If you request a trial, a Notice of Trial will be mailed to the owner of the vehicle plate indicating the location of the trial.

General inquiries regarding errors on a Notice, stolen vehicles, parking permits and/or Accessible Parking Permits, including inquiries from persons residing more than 100 kilometres from Toronto, should be directed to Parking Tag Operations at (416) 397-TAGS (8247).

15. The Director, Revenue Services (Director, RS), advised that there is a considerable amount of information that is required, by law, to appear on the ticket.

> How to dispute, where to go, what to do if you disagree. That has to appear and so it doesn't leave a lot of room for discretionary messages.

16. It is the position of Revenue Services that the trial option should not be highlighted, as it has found that recipients are apt to challenge a ticket even when the circumstances do not merit a challenge.

17. The Manager of Water and Parking Tags, Revenue Services (Manager), stated that the hand-held ticket issuing devices used by enforcement officers are to be replaced in 2013, and Revenue Services would like to see the ticket size increased somewhat to accommodate additional text.

> They were supposed to change the police hardware this year, 2012. They just pushed that back, and if we go to a larger format, the ticket, we'll completely revamp it. We've been limited by space in a lot of things we want to see on the back. So it's certainly our intent to do that. And if we can go to a larger format, there are a number of changes that we want to undertake.

5.3.2 General Enquiry Line (TAGS)

18. At the bottom of the reverse side of the parking ticket, it states:

> General inquiries regarding errors on a Notice, stolen vehicles, parking permits and/or Accessible Parking Permits, including inquiries from persons residing more than100 kilometres from Toronto, should be directed to Parking Tag Operations at (416) 397-TAGS (8247).

19. The 416-397-TAGS (8247) general enquiry number functions in the following manner:

> The automated introductory response states: "Welcome to the City of Toronto's parking ticket payment and information automated system. To pay a ticket, press '1'. For parking information press '2'.
>
> '1' allows ticket payment by telephone. It also informs the caller *"you can also pay your ticket on line at* www.toronto.ca/parkingtickets," *and that $2 administrative fee applies;*
>
> '2' provides automated information on the following subjects:
>
> - Parking ticket payment information (*advises that "tickets may be paid on line or by phone using Visa, Master Card or Amex. You can also visit one of our 4 office locations which accept payments by cash, debit, cheque, money order, Visa, MC, or Amex. Please note that, when paying on-line or by phone, a $2.00 administrative fee is charged." The addresses and hours of the 4 Parking Tag offices are provided.)*

- Parking ticket status update (*advises that "you can also pay your ticket on line at* www.toronto.ca/parkingtickets," *and that $2 administrative fee applies*

- How to dispute a ticket ("*Please visit one of our 4 office locations*.")

- The accommodation process for persons with a disability or who reside more than 100 kilometres outside the City, ("*Press '1' to hold for the next available customer service representative*.")

- Parking permits (*refers caller to the permit office; provides telephone number or caller can be transferred*);

- Lost tickets (*explains where to report a ticket lost within seven days and the process if the ticket was lost more than seven days ago*)

- Towing of ticketed vehicles (*refers caller to the Parking Enforcement Unit of the Toronto Police Service*)

- Parking enforcement officer complaints (*refers caller to the Parking Enforcement Unit of the Toronto Police Service*)

- The Toronto Parking Authority (*refers caller to the TPA: provides TPA telephone number or option to be transferred*).

5.3.3 City Website

20. The home page of the City of Toronto's website includes 'Pay a Ticket' as one of nine options prominently featured under 'Living in Toronto'. This link goes to the Revenue Services' *Pay Toronto Tickets* page, which states that:

    - All parking and provincial offences tickets may be paid through one on-line location.

    - A fixed fine system for parking tickets has been approved by Toronto City Council. Under this system, Justices of the Peace will no longer have the option of reducing the set fine that appears on the notice of infraction.

    - The City has introduced a new parking ticket dispute process that allows disputes involving parking meters and/or pay-and-display machines to be handled online. It states that the "new system is timely and effective and it will allow the City to deal

with disputes instead of the provincial courts." A link provides detailed information about how to use this process.

- The Parking Ticket Cancellation Guidelines, which outline the circumstances in which a parking ticket can be cancelled and the evidence that is required to support cancellation, are available on-line. A link to the public version of the full Guidelines is provided.

- A Customer Service Numbering System has been installed at the Metro Hall Parking Ticket counter to improve customer service. This new process will help to reduce wait times and ensure each customer's transaction is efficient and confidential.

21. The *Pay Toronto Tickets* page takes the user to the *Toronto parking tickets* webpage. This page says that the City enforces its parking bylaws by issuing tickets to illegally parked cars. It states that a large municipality such as Toronto must maintain legal parking, regulate traffic movement and ensure public safety.

22. This page provides links to the following:

- *Payment online*
- *Payment in person*
- *Payment by mail*
- *Payment by telephone*
- *Defaulted fines*
- *Plate denial*
- *Disputing your ticket*
- *Parking ticket collections*
- *Frequently Asked Questions*

23. The first four of these linked pages outline in detail the procedures for the various methods of payment.

24. The defaulted fines page explains how and where to pay defaulted fines, and provides the 416-397-TAGS (TAGS) number for questions.

25. The plate denial page explains the action that may be taken once a court conviction has been registered for a parking infraction, and the effect of the conviction if no action is taken.

26. The *Disputing your ticket* page contains the following text:

Where the process starts:

- How to complete the notice
- Filing a Notice of Intent to Appear
- Scheduling a trial date
- Your day in court

The back of your Parking Infraction Notice or Notice of Impending Conviction advises you of a third option for dealing with your tag – the dispute process. Within the time specified, you or your agent must bring the notice personally to one of the four following locations:

Parking Tag Operations – Central
Metro Hall, 3rd Floor
55 John Street (John south of King)
Toronto, Ontario

Hours of Operation: Monday to Friday: 8:30 a.m. – 4:30 p.m.

New to this Location:
Customer Service Numbering System at Metro Hall
All customers visiting the Metro Hall Parking Ticket counter to pay or dispute a parking ticket will no longer have to wait in a long line up for service.

Customers will now take a number, have a seat in the new waiting area and wait for their number to be called for service. Disputing a ticket? A new booth gives customers a space to fill out a 'dispute' form *before* seeing a customer service agent.

This new process will help to reduce wait times and ensure each customer's transaction is efficient and confidential.

Parking Tag Operations - East
1530 Markham Road, Main Floor
Scarborough, Ontario
Hours of operation: Monday to Friday: 8:30 a.m. – 4:30 p.m.

Parking Tag Operations – West
York Civic Centre, Main Floor
2700 Eglinton Avenue West
York, Ontario
Hours of operation: Monday to Friday: 8:30 a.m. – 4:30 p.m.

Parking Tag Operation - North
North York Civic Centre, Ground Floor
5100 Yonge Street
North York, Ontario

Hours of operation: Monday to Friday: 8:30 a.m. – 4:30 p.m.

Note: All four sites are wheelchair accessible. Closed on statutory and civic holidays.

Note: Persons with disabilities who live more than 100 kilometres from the City of Toronto, whose vehicle was stolen or who are holders of valid permits for parking in designated parking spot may call 416-397-TAGS (8247) during regular office hours, Monday to Friday, 8:30 a.m. to 4:30 p.m., for assistance in dealing with a parking infraction notice. TTY users may call 416-392-0719. This is also the number to call for any enquiry relating to parking tickets. **Do not take the notice to a Toronto police station.**

Discuss concerns
You may discuss your concern regarding the issuance of the ticket with a counter staff member, who has the authority to:

- initiate a further investigation
- provide more information regarding the infraction or bylaw
- withdraw the charge under certain circumstances.

Request a trial
If your concern/dispute cannot be resolved at this point, you may request a trial by completing a Notice of Intention to Appear in Court and filing this document with the counter clerk. You cannot set a trial date by mail.

27. Additional pages are linked. These include explanations of how to complete the Notice of Intention to Appear, where to file it; how it will be processed by staff at the Parking Tag Operations counter; filing by an agent of the registered owner; how trial dates are scheduled; procedures leading up to the trial; when trial proceedings will begin; court locations; changing a trial date; and payment of the fine after a trial date has been scheduled.

28. The *Scheduling a trial date* page states that notice of trial will be mailed to the defendant approximately 75 days after the infraction date. The trial will be scheduled for the earliest available date and time. Only day court sessions are available. Payment of the fine after the trial has been scheduled is only permitted under “extreme circumstances”, and at least three weeks in advance of the trial date, so that those scheduled to attend the hearing can be notified and the court can endeavour to schedule another matter for the date and time left vacant. Information on how to change a trial date is available on the (linked) Court Services website.

29. *Your day in court* outlines the procedures at trial, the roles of the various participants in the trial, the effect of guilty and not guilty pleas, the result of a failure to appear and the procedures for overturning a conviction. This page states that all parking ticket trials are held at the 1530 Markham Road courts.

30. The *Frequently Asked Questions* page provides answers to a number of questions relating to payment and trial procedures.

31. The City's Court Services website advises that parking ticket payments and requests for trials for parking matters are processed at Parking Tag offices and not at Provincial Court locations.

32. This site provides a link to the 'Toronto Parking tickets' payment page.

33. The site also states that there are three options to change a trial date.

    1. Where you are seeking to change the first trial date given, attend the court office, obtain a Request for Adjournment of First Trial form, take completed form to prosecutor's office to obtain consent, return the signed form to the court office and request that they approve a new date.

    2. Where the first option does not apply, attend the court office where the trial is to be held at least 5 days before the scheduled date, file a notice of motion for a different date, and return later to have the notice heard by a Justice of the Peace.

    3. Have your representative appear on the trial date and request the Justice of the Peace to change the trial date.

34. A link to the parking ticket payment site appears on the Toronto Police Service Parking Enforcement webpage.

5.4 Process

5.4.1 Payment

35. Parking tickets can be paid on-line (24-hours), by telephone (24-hours), in-person at Parking Tag Operations' locations or by mail.

36. Payment may be made by Visa, MasterCard, or American Express, and, if in person, by cash, cheque, travellers cheque, money order or debit card.

37. The ticket recipient has 15 days to pay the fine. Between days 15 and 30, if the fine remains unpaid and a trial has not been requested, a Notice of Impending Conviction will be mailed to the registered owner. If no action is

taken by day 60, a Certificate Requesting Conviction is sent to the court for signature. Following conviction, a Notice of Fine and Due Date is sent to the registered owner. After 90 days, information is sent to the Ministry of the Attorney General for licence plate denial.

38. The Manager advised that payment of the fine may be made even after a trial has been scheduled, and up to 48 hours before the trial date.

39. If a fine is paid after the trial has been scheduled, Court Services is notified of payment through the Parking Tag Management System.

5.4.2 General Enquiry Line (TAGS)

40. The Manager described TAGS as primarily an information or enquiry/payment line.

> The TAGS line is really a guidance line to say - 'here is your issue, and here is what you need to do. Fax your permit in to us or fax your information or email, or the alternative is you need to come in.'

41. He said some issues raised by ticket recipients can be dealt with by an enquiry through the TAGS line without the recipient attending in-person. These will not be true disputes, but rather questions of fact that can be verified by checking information on file, or by documentation submitted by the ticket recipient. In some cases, tickets will be cancelled following such an enquiry.

42. The Manager said that cases in which it is necessary to speak with someone or obtain verification information through outside agencies such as the Toronto Parking Authority or the Toronto Police Service can also be initiated though the TAGS line. Such cases will be directed to investigation staff at Revenue Services to follow up.

43. He gave as an example a ticket issued by a private parking authority in which the individual stated that he had a valid parking permit displayed. The investigation staff would contact the property management firm to verify whether the individual was in their permit registry. If this was confirmed, the ticket would be cancelled.

44. A parking ticket issued to an individual who had a valid parking permit that was not displayed at the time could also be handled through TAGS. The enquiry would be passed on to investigation staff in Revenue Services to verify the permit, following which the ticket would be cancelled.

45. The Director, RS advised that Revenue Services does not view these as disputed tickets, but rather cases in which a secondary verification of the facts

is required. Individuals whose issue cannot be verified by information available to Revenue Services will be told that it is open to them to raise the matter in court.

46. Since the City assumed responsibility for the screening process from the courts in 1994, this avenue of review has also been available to persons with disabilities or individuals who reside more than 100 kilometres outside Toronto.

47. The Director, RS and the Manager both stated that the City is limited in the way it may describe the TAGS line to the public. They understand that, by virtue of sections 16 and 17.1 of the *Provincial Offences Act*, a dispute must be dealt with at trial, which must be requested through an in-person appearance.

48. The Director, RS stated that “we don’t bill it [TAGS] as a dispute line.”

5.4.3 Email/Fax System

49. In April 2011, the City introduced a process that allows motorists with issues involving tickets for parking meter and pay-and display machines to submit their ticket and supporting documentary information by fax or e-mail. If the issue meets criteria set out in the City of Toronto Parking Ticket Cancellation Guidelines (Guidelines), the ticket can be cancelled.

50. The Manager advised that this process is intended to provide enhanced service for people with straightforward ticket issues that can be substantiated by documentation.

51. The system had also been in place for ticket recipients who are disabled or who live more than 100 kilometres outside Toronto. The new initiative made the process available for disputes involving pay and display machines and parking meters.

52. The Director, RS stated that the City prepared a communications package when the system was launched to make the public aware of the program.

53. Approximately 40,000 disputes were submitted through this portal in 2011. The number of such disputes initiated through First Appearance Facilities dropped.

54. The Manager advised that email/fax enquiries about issues not included in the email/fax protocol will not be rejected. Investigation staff will review the case to determine if it is a cancellable ticket. He said that they do receive a large number of enquiries about other ticket issues through this portal.

5.4.4 First Appearance Facilities

55. Ticket recipients who wish to dispute their ticket in court must deliver the Notice of Intention to Appear in person to one of the City's four First Appearance Facilities (FAFs). This requirement is set out in section 17.1(3) of the *Provincial Offences Act,* which states that:

> A defendant who is served with a parking infraction notice may give notice of intention to appear in court for the purpose of entering a plea and having a trial of the matter by attending in person or by representative at the place specified in the parking infraction notice at the time or times specified in the parking infraction notice and filing a notice of intention to appear with a person designated by the regulation.

56. FAFs have the discretion to cancel tickets pursuant to the Guidelines. FAF staff are also available to answer questions that may be raised by the recipient about the terms of the ticket and the dispute process.

5.4.4.1 Parking Ticket Cancellation Guidelines

57. The Guidelines have been in use since 1993. They were originally developed as an internal document to assist staff in responding to queries raised by residents about the validity of certain parking tickets. They were made public in May 2010.

58. The City states in a May 11, 2010 staff report from the Treasurer and City Solicitor to the Government Management Committee that:

> The reasons for publishing ticket cancellation guidelines as recommended in this report is to streamline the process for disputing a parking ticket, and to reduce the number of parking tickets where a trial has been requested. If the public are aware of circumstances where a ticket may be cancelled without having to request a trial, and they have valid grounds or evidence to support the cancellation, they may simply request that the ticket be cancelled at one of the City's First Appearance Facilities.

59. The Guidelines are intended to cover situations where there is little or no probability of conviction if the matter goes to trial. These will include tickets that are considered to have been issued in error, such as an infraction notice that does not include all required information. In some categories, the Guidelines prescribe criteria that must be met to support the cancellation, such as a ticket issued to a rental car, if the operator has a valid on-street

parking permit and can show evidence that the vehicle to which it applies was being repaired. There are also categories that provide discretion if there are compelling reasons to cancel the ticket, such as a medical emergency that required parking in a restricted area.

60. The introduction to the Guidelines states that:

> To dispute a City of Toronto parking ticket, you or your representative must attend in person at one of the City's four parking ticket counters (First Appearance Facilities). To support your claim you must bring evidence (e.g. permits, written statement, supporting documents, photos, etc.) that establish that the parking ticket meets the criteria for cancellation in these Guidelines.
>
> Staff review each disputed ticket individually and the evidence presented by the person who received the ticket, or their representative, to understand the nature of the infraction, and the circumstances surrounding the ticket issued.
>
> The Guidelines below are to be used for City of Toronto issued parking tickets only. They are meant to serve as a reference to provide an understanding of the circumstances in which a City of Toronto parking ticket may be cancelled and to outline the evidence required to support a parking cancellation.

61. The Guidelines list a large number of circumstances in which a parking ticket may be cancelled, and the conditions required for cancellation in each case. These include such things as:

- Sign Missing or Illegible
- Pay and Display Machine Missing, Removed or Inoperable
- Cancellations Related to Parking Permits
- Emergency Vehicle
- Religious Observances
- Security Companies – Alarm Response
- Special Parking Considerations
- Extenuating Circumstances

62. The Guidelines are available through the 'Pay Your Ticket' page of the City's website. They are not referenced on the 'Dispute your Ticket' page.

63. The City does not make a copy available at the FAFs, either in the public/waiting area or at the wickets.

64. Complainants have reported to my office that they are unaware of the Guidelines.

65. My investigator interviewed a paralegal who has been involved in parking ticket disputes and who is trained as a municipal law enforcement officer did not know about the Guidelines. He searched the City website under 'parking ticket dispute' and was unable to find them.

66. My investigator asked Revenue Services if it believes the public has been adequately informed about the Guidelines. The Director, RS, responded that this question has been discussed. He said that the matter of the public's awareness of the Guidelines has also been raised by members of Council.

67. He advised that Revenue Services would be open to determining ways to increase their prominence, such as adding additional links on the website. "We would agree, because the purpose was to put the information out there."

68. The Director, RS, said that they had considered making a copy of the Guidelines available to the public at FAF locations, but concluded that it would be difficult to securely mount a 19-page document that would be reliably available.

69. He said FAF staff are told to refer people to the Guidelines on the website.

70. The Manager stated that Revenue Services monitors decisions of parking ticket courts to determine if they have a bearing on circumstances covered in the Guidelines. He said Revenue Services also reviews the Guidelines on an annual basis to assess,

> what's working and what isn't working. One of the things we've identified and are putting in place is a provision to extend the 5-minute grace period to 10 minutes.

5.4.4.2 First Appearance Facility Procedures

71. The first FAFs established in 1993 were operated by the Toronto Police Services Parking Enforcement Unit. Their operation was transferred to Metropolitan Toronto in 1994 and to the City in 1998.

72. The original function of the FAF was to accommodate the in-person filing requirement prescribed by the *Provincial Offences Act.*

73. The Director of Court Services (Director, CS) and the Director of Prosecutions, Legal Services, advised that the in-person appearance requirement was based on the rationale that individuals who wished to

dispute their ticket should first go through a screening step in which they speak with staff to determine whether their issue is one that can be addressed without going to court.

74. The Director, CS stated that:

> The intent was that individuals who wanted to use the court process should first go through some process to satisfy that they understand whether or not there was a fault in the system. It was felt, particularly with parking tickets, that they should come in to an office and have an opportunity to talk with staff to see if they could somehow settle in their mind that a trial was needed. For example, could someone investigate whether the sign truly wasn't there? Whether there were some technical things that happened roadside that should be investigated?

75. He stated that, prior to the statutory requirement, disputants simply had to sign and mail in their ticket. Under this system, requests for trial were so easy and routine that the volume of trial requests brought the court process to a halt.

76. A May 11, 2010 staff report to the Government Management Committee states that "the intent of the FAFs is to review the circumstances of the infraction and to withdraw or reduce charges where appropriate. A trial would only be requested and scheduled where an issue was unable to be resolved at the FAF."

77. The Guidelines state that FAF staff review each ticket individually, together with the evidence presented by the person who received the ticket, or their representative, to understand the nature of the infraction and the circumstances surrounding the ticket issuance.

78. The Director, RS, and the Manager both stated that the role of FAF as a screening facility has expanded over time. As it became evident that there were situations where the ticket was cancellable, the Guidelines evolved. They said that the role of the FAFs is to deal with straightforward issues that either do not require the court's time or that will not result in a conviction if they go to trial. This applies to enquiries received through FAFs and by email/fax, TAGS and letter.

79. The Manager described what Revenue Services does as a “vetting process.”

> Let’s save the court time by cancelling out the tickets that have no prospect of conviction or where the guy has some really compelling reasons.

80. He advised that they have been cautioned that the FAF may not provide legal advice or function as a quasi-judicial body.

81. He said that the FAF staff routinely check the information on the ticket to make sure it matches the registration information. He stated that, if a recipient presents the completed Notice of Intention to Appear at the counter and states that they wish a trial, the staff person will not enquire as to the nature of the issue.

82. The Director, RS, stated that, if the recipient said ‘should I fight this’ or ‘do I have to take this to court’, the staff might ask them about their dispute. He stated, however, that some customers know the system and will just present their Notice of Intention to Appear and say ‘trial request please.’ These would be processed without further enquiry.

> The purpose of the FAF staff is to determine “do you meet the cancellation guidelines?” We’re not here to adjudicate and cut you a break and give you the benefit of the doubt. We’re here to see if it meets the strict guidelines for cancellation. If it does, yes we’ll cancel it. There isn’t that much discretion granted to those people.

83. He said that, as on the TAGS line and in the investigation area, staff at FAF counters do not deal with disputes proper. He understands a ‘dispute’ to be a situation that requires adjudication. FAF staff will refer such cases to the trial process.

> ‘Dispute’ speaks to an adjudication process where you have a neutral party and two other people giving evidence. … That’s a dispute. What the cancellation process that the FAFs staff do is simply a screening to see whether it fits into this cancellation protocol.

84. The Manager said the term dispute is “anybody who challenges their ticket, but the term dispute as referenced on the ticket is ‘I’m going to court’ and I’m only going to vet it for you.”

85. The Director, RS, said “a dispute or an enquiry or something can always be referred to the investigations unit, regardless of how it’s received …They will

investigate and if there are grounds for cancellation, they'll cancel it or they'll get back to the person and say 'no we can't do it.'

86. Enquiries and requests for cancellation that require additional information are directed to Revenue Services' investigation staff. These enquiries may have come in through the FAFs, the TAGs line, the email/fax process, or regular mail. The investigation staff coordinate the gathering of the required information from sources such as the Toronto Parking Authority, Transportation Services and the TPS Parking Enforcement Unit. Where the ticket is pending, investigation staff will endeavour to complete this review within 48 hours.

87. FAF and other Revenue Services staff are required to keep a supporting documentary record of ticket cancellations. Cancellations are reviewed weekly by supervisory staff. This practice reflects a recommendation in the Auditor General's November 2009 Report, 'Controls over Parking Tags need Strengthening', in which he concluded that the policies and procedures specifying documentation requirements to support cancellations were not adequate.

88. The Manager believes, based on his experience, that the public understands the information about the function of FAFs that appears on the infraction notice. He advised that only about 5% of persons attending a FAF are there for the first time and those are usually people from out-of-town. He said that those who have dealt with parking ticket disputes in the past know that they can discuss ticket issues with the FAF staff person.

> Most people understand Toronto's protocol and say 'okay, if I get a ticket, I go there. Let me try this option.'

89. The Director, RS, advised that the activities of courier and delivery companies are an issue at FAF counters. These businesses receive large numbers of parking tickets. Representatives will attend regularly at FAF locations with a large batch of tickets on which they wish to file Notices of Intention to Appear. They may have them completed in advance, but they will nevertheless occupy a wicket for prolonged periods, thus delaying service to individual ticket recipients.

90. Revenue Services has contemplated whether these and other high volume customers can be served in a way that does not impede service to individual ticket recipients. It has considered setting up a separate wicket, setting prescribed hours, or processing paperwork 'behind the scenes' for pick-up the following day.

91. The Director, RS, and the Manager advised that Revenue Services has also considered other measures to enhance service and increase its accessibility, including video-conferencing, expanding phone service and the email/fax system to include other offence types, expanding FAF counter service, installing the numbering system at other FAF locations, and opening a 'super-counter' that would have up to 50 wickets that provide additional services such as dog licensing.

92. Revenue Services has not moved forward on initiatives that would require additional revenue because there is a possibility that the City could move to an administrative review process for parking ticket disputes.[1]

93. The Director, RS, advised that "municipalities are in a holding pattern" regarding alterations to service provision.

5.4.4.3 First Appearance Facility Locations

94. There are four FAFs in Toronto. They are open from 8:30 am to 4:30 pm, Monday to Friday.

95. The Manager stated that customer wait-times at the four locations typically range from 4-15 minutes.

96. My investigator visited the four FAF counters to observe their operations.

East FAF

97. The East FAF is located in a large room where customers line up in a queue directly in front of the wickets. They are advised by posted signs to complete a Notice of Intention to Appear prior to lining up. Copies of the form are available.

98. My investigator's site visit was conducted at 1:00 pm. Seven people were waiting in line. Two of the four wickets were open. The wait time to speak with a staff person was approximately eight minutes.

99. The staff person stated that the mid-day period tended to be their busiest time, and that wait time during this period was more typically 15 minutes.

100. The staff person advised that she does not cancel tickets very often as "my authority is limited." She stated that she rarely deals with matters addressed by the Guidelines. She said that people do not appear to know about the Guidelines and few ask about them.

[1] The *City of Toronto Act* provides for an administrative monetary penalties system for parking violations as an alternative to the court process.

101. She stated that she will try to answer questions raised by customers, but does not initiate enquiry as to the reasons for disputing the ticket. If the recipient has a parking ticket and presents their completed form, she will normally just accept and file the Notice of Intention to Appear.

West FAF

102. The West FAF is also located in a large open area where customers wait in a queue in front of the wickets. There were eight people waiting in line at 9:45 am. Three of seven wickets were open. Wait time to speak with a staff person was seven minutes.

103. Blank copies of the Notice form were available, but signs prompting disputants to complete it before lining up were not posted.

104. When the staff person was asked how she responds if a customer raises questions or disputes about the ticket, she stated that "we don't handle disputes here. We only file the Notice of Intention to Appear or take your payment."

105. She said that the Guidelines are available on line for customers to view.

North FAF

106. The North FAF is in a very large open space partitioned off from the Centre's central corridor. The area accommodates both the 'Property Tax and Utility Payments/Inquiries' and 'Parking Ticket Payments/Inquiries' wickets.

107. There are signs posted on the parking ticket side advising disputants that they should complete a Notice of Intention to Appear prior to lining up. Notice forms are available. Customers then wait in separate queues in front of the wickets.

108. There were 10 people in line for the Parking Ticket Payment/Inquiries section when my investigator attended at 2:15 pm. Two of the four wickets were open. It took 15 minutes to reach a staff person.

109. The staff person stated that they answer recipients' questions about the procedure for dealing with the ticket. They will also respond to questions or issues about the reason the ticket was issued, such as the signage in the area where the ticket was issued. He said they might try to provide information on that, but they have only Google Maps for reference to check signage.

110. The staff person said that he does have the authority to cancel a ticket. He would do so only in a straightforward case “where it was obvious that the Guidelines covered it.”

111. He stated that he could send an issue for further investigation if more information was needed.

112. He would not initiate discussion about the nature of the dispute.

113. He stated that few people seem to know about the Guidelines and that they are not often raised by customers.

Central FAF

114. The Central FAF at Metro Hall differs from the other three locations, in that it uses a numbering system.

115. The entrance area is set up so that an arrow on the floor directs customers to a sign on the wall, advising them to fill out a 'form', take a number, and sit down in the adjacent waiting area and wait until their number is called.

116. There is an electronic number board at the front of the waiting area, showing which number is being served at each of the open wickets.

117. My investigator attended at 9:30 am. All four wickets were open. There was one person waiting and two being served.

118. The wait-time was three minutes.

119. Four wickets are open all day, except over lunch, when there will be three or sometimes two open.

120. If a customer raised an issue about the reason for receiving the ticket, the staff person would discuss it with them. If the customer simply presented the completed Notice of Intention to Appear, however, the staff person said she would not ask about the issue/dispute but would simply accept and file the Notice.

121. If the issue raised was something covered by the Guidelines, she stated that she would respond to it. The staff person said she has the authority to cancel a ticket if it is permitted by the Guidelines, and cancels them quite regularly. She gave as examples a ticket for not displaying a disabled parking permit, if the person brought the permit in, or she checked on-line and saw that s/he had one; or a pay-and-display receipt that might not have been visible to the ticketing officer.

122. If the customer raised an issue covered by the Guidelines, but there was insufficient information available for her to make a decision, she said she could pass it on for further investigation. She reported doing this about twice a week. The location and visibility of signage might be an example of such a case.

123. The staff person said that if the customer raised an issue not covered by the Guidelines, or that she did not have the authority to deal with, she would direct them to court.

124. My investigator also spoke with the Supervisor. He pointed out that the Guidelines provide discretion. The staff person may consider the past history of the customer when determining whether cancellation is appropriate. If a customer has received repeated tickets for the same violation, such as not displaying their accessible parking permit, the staff person may refuse to cancel the ticket.

125. He advised that the proximity of signage is a very common ground for dispute. It is something that would require investigation, but it is used "frivolously" by some members of the public and may not be sent to investigation in every case.

126. The Supervisor explained that the Metro Hall FAF location handles the largest volume of customers, at approximately 120,000 per year. It is also responsible for selling metropasses, which adds to the volume.

127. It is his view, based on the activity at this FAF, that disputants make frivolous use of the court system by requesting trials because they believe the fine will be reduced, rather than because they have grounds for dispute.

128. The Supervisor said this is particularly so with courier companies. He advised that the Metro Hall location deals frequently with courier companies, or their agents, who come in with large batches of tickets. He said such companies previously would pay some of the tickets and, presumably, request trials on only those on which they had actual grounds for dispute. The Supervisor said they now routinely request trials on all parking tickets. The staff person might therefore be tied up for an hour, even when the Notices have been completed in advance.

129. He said the volume of traffic at this location had previously been problematic. The FAF originally had just one room where people would be lined up in a long queue. They received many complaints about the delay and confusion. There were also concerns about privacy, since everyone could hear the matters under discussion at the wickets.

130. He proposed the numbering system and separate waiting area to increase efficiency and privacy.

131. The Supervisor said that service has improved immeasurably since the numbering system was introduced in August 2009. Wait times have been reduced and privacy is improved.

132. The Manager advised that there were approximately 500,000 visits to FAF facilities in 2011. This was an increase of about 21,000 from 2010. Approximately 25% of these visits (128,000) resulted in ticket cancellations.

133. A total of 138,000 parking tickets were cancelled in 2011 by all FAF, investigation, police parking enforcement and other Revenue Services staff.

5.4.4.4 Court Proceedings

134. Disputants whose concerns are not addressed through attendance at a FAF, or who wish to have a trial, commence the process by filing a Notice of Intention to Appear.

135. Currently, five of Toronto's 30 courts are dedicated to hearing parking ticket cases, at 70 Centre Avenue (3), 1530 Markham Road (1) and 2700 Eglinton Avenue West (1).

136. Each court has until recently handled approximately 30,000 cases yearly.

137. In 2011, these courts were able to accommodate a total of 158,880 trials. Capacity in 2012 is expected to be 210,440.

138. The number of ticket recipients requesting a trial has increased from 2.5% in 2004 to 11% in 2011. This amounted to approximately 300,000 requests for trial in 2011.

139. The Treasurer and City Solicitor state in a June 13, 2011 staff report to the Government Management Committee that this increase may be due to such factors as changes in fine levels; the removal of the voluntary payment amount; the perception by the public that, by requesting a trial, a parking ticket may be dismissed, never come to trial or result in a reduced fine in court; and multiple and routine trial requests.

140. The Province of Ontario appoints the Justices of the Peace that preside over all Provincial offences courts, including parking ticket courts. The Judiciary determines how these courts are used to hear the various types of charges, including parking tickets.

141. The Director, CS, said that the courts cannot accommodate all parking ticket trial requests. It has for several years been necessary to prioritize cases when scheduling trials. Tickets on which trial requests cannot be scheduled are set aside.

142. The Director, CS, stated:

> Some people might think that building more courtrooms is the solution. It's not. We have no control over the number of JPs. You could have a 100 courtrooms but you wouldn't have any more open than you do today...The JPs are the critical piece and I think there is not an appetite provincially to keep appointing JPs.
>
> We will always have that gap between what we're able to provide court dates for and the demand for court dates… As clerk of the court, I have to look at the entire case folder that comes through the division, everything from the minor $10 parking tickets through to issues where you don't have a fine but have very serious provincial offences where there's been fatalities involved under occupational health and safety regulations. So we have a wide range of charges that come through the division. I'm charged with making sure there are sufficient court dates for more important charges, as well as what we feel are time sensitive charges. So when we work with the judiciary on how to distribute the available court space, those are some of the things we have to keep in the front of our mind.

143. The parking ticket cases heard during the first four months of 2012 were based on trial requests filed 13 to 19 months earlier, from mid 2010 to early 2011. Most of the 2011 parking ticket recipients who requested trials were awaiting notification of a date.

144. Ticket recipients scheduled for trial are notified of their trial date 12-16 months after ticket receipt. The trial itself is held approximately 2- 4 months later. If the disputant cannot attend on the date scheduled, it is possible to request a new court date. Rescheduling may add up to add six months to the timeline.

145. The Director, CS, estimated that about half of parking ticket trial requests are from persons who do not intend to dispute the ticket at the trial, but know they can expect a reduced fine upon conviction.

146. In 2010, the court reduced the fine amount that appeared on the ticket in 62% of trials that resulted in convictions**.**

147. In 2010, 33.4% of defendants scheduled for trial failed to appear. In 2011, 25% failed to attend.

148. The Director, CS, stated that there are disputants who request a trial because they believe the case will never be scheduled and they will therefore not be required to pay the fine. [2]

> I think that there are companies particularly leaning that way**.**

149. He said that many of these individuals will proceed to pay their fine if they receive a Notice of Trial.

150. He advised that it can be difficult for the court to accommodate the large number of disputants who pay the fine after being scheduled for trial, especially if this is done within days of the trial date. Court Services has determined that it can predict the approximate percentage of disputants who will fail to appear for their scheduled trial, and it can increase the number of cases on the court docket at a comparable rate in order to fill the gaps and avoid unused court time.

151. The Director, CS, believes the current court process provides a fair and reasonable review, particularly given judiciary constraints and the competition for court time.

> We have a marvellous court system in Ontario. It's fair. At the same time, it can be abused if the checks and balances aren't in place…If we can have a structure in place that can do a proper review upfront, and the transparency is there and the public realize that they're being treated fairly, that's an important part of it.

152. The Director of Prosecutions believes the present system provides procedural fairness.

> You've only got so much capacity in the court room…We're trying to make the capacity fit the volume of requests…There is a large percentage who request trials either just to bide time or because they think they'll never get trial dates and they'll just go away."

[2] Once a trial has been requested, the fine becomes payable only upon conviction by the court.

153. He said that it is standard prosecutorial practice to withdraw some cases based on an assessment of the nature of the case and court availability.

> Prosecutors are given a great deal of discretion…It's not just true of the *Provincial Offences Act*. It's true of the criminal system. Crown attorneys do it all the time. They look at what's coming into the system. They look at court capacity to hold trials…. A prosecutor withdrawing a charge is a way of saying 'this isn't important enough to have the court allocate time to deal with it.'

154. The City's Provincial Offences Courts also handle other charges pursuant to the *Provincial Offences Act*, such as the more serious traffic offences under the *Highway Traffic Act*. The Director, CS, advised that these charges are not withdrawn or held because of capacity limits. Court capacity is a factor in scheduling parking ticket trials only.

6.0 Initiatives and Modifications

6.1 Court Capacity

155. The Director, CS, advised that Court Services has determined that parking ticket courts can accommodate a larger number of trials than had previously been scheduled.

156. In early 2012, Court Services received approval from the judiciary to increase the number of cases on the court docket. Based on the time required per case and the number of disputants who do not attend their scheduled trial, it was determined that each court room could accommodate 60,000 cases, or 300,000 total in the five courts. Because the change was implemented part way through the current year, the number of cases heard in 2012 is projected to be 210,440.

6.2 Courier/Delivery Parking Permit

157. The Transportation Services Division (Transportation), which administers the parking permit program, has requested approval to develop and implement a Courier/Delivery Vehicle Parking Permit. This would exempt appropriately licensed, insured and identified courier and delivery vehicles from specific 'No Parking' regulations for a maximum period of 30 minutes while the driver is in the process of making a delivery or pick-up.

158. The Acting General Manager, Transportation, submitted a staff report regarding the proposal to the City's Public Works and Infrastructure Committee on December 6, 2011. The report stated that the proposed permit

is intended to address the difficulty experienced by courier and delivery vehicles in the central area of the City due to competing curb lane demands.

159. The matter was considered by the Committee. On January 4, 2012, it referred the matter back to the Acting General Manager, for a further report to include information on implementation of courier delivery zones, and opportunities for more ethical goods transport in Toronto, following meetings with the Canadian Courier and Logistics Association and the Toronto Atmospheric Fund. Another report is to be submitted to the Public Works and Infrastructure Committee by December 2012.

6.3 Fixed Fine

160. In September 2011, the City approved a fixed fine system for parking tickets. Under this system, the fine amount payable upon conviction will be the same amount that appears as the set fine on the ticket. The court will no longer have the option of imposing a fine that is less than the original ticket amount. It is expected that the fixed fine system will help to reduce the number of trial requests, by removing the unintended incentive to request a trial even when the ticket recipient does not intend to dispute the ticket.

161. The June 13, 2011 City staff report on a Fixed Fine System for Parking Tickets stated that:

> Faced with an increasing number of trial requests, limitations on court room capacity and a shortage of provincially appointed Justices of the Peace, and in the interests of encouraging trials to be requested only when there is an issue to be tried in relation to whether the offence occurred, it is appropriate to consider procedures that encourage the early resolution of parking tickets, and which provide a financial incentive for out-of-court resolution when there is not an issue to be tried, thereby minimizing unnecessary trial requests. A reduction in trial requests will increase court capacity to hear valid parking ticket disputes in a timely manner and ensure that fewer parking ticket disputes are stayed or withdrawn due to the length of time that has elapsed since the ticket was issued.

162. The Director, CS, said,

> I think the intent is to make sure the court system is reserved for the most serious offences. If people are going to court simply to save $20 or $30, that's contrary to what the fine penalty system that's in place says.

163. The Fixed Fine System is expected to be implemented in early 2013.

7.0 Alternate Dispute Models – The Administrative Monetary Penalty System

164. Administrative Monetary Penalties (AMPs) are a mechanism for enforcing compliance with regulatory legislation.[3] The penalties are imposed by a regulator for contravention of an act, a regulation or a by-law. Unlike a fine, which is intended to be punitive, a penalty is seen as an obligation to compensate the state for harm done to it.[4] An individual subject to an AMP does not face the possibility of imprisonment.

165. The regulator issues an administrative penalty at the time the unlawful act is detected and, unlike a fine, it is payable at the time detected rather than only once the person has been convicted.

166. AMP systems typically provide a right to dispute before an administrative decision-maker rather than a court. The penalty is payable subject to any rights of review available under the AMPs program.

167. AMP systems are promoted as a means to relieve over-burdened courts and streamline and expedite the dispute process for minor offences while maintaining the individual's right to a hearing.

168. In 2007, the Province of Ontario passed legislation that allows municipalities to set up AMP systems.

169. Section 102.1 of the *Municipal Act* creates authority to impose an administrative penalty where a person fails to comply with a by-law restricting parking, standing or stopping of vehicles.

170. The same authority is enacted by section 18. (1) of the *City of Toronto Act.* Regulation 611/06 under the *City of Toronto Act* requires a municipality to pass a by-law establishing an AMPs system in order to exercise its authority to use AMPs for parking. If a municipality sets up an AMPs process, the *Provincial Offences Act* no longer applies.

7.1 The AMPs Experience in Other Municipalities

171. Some municipalities in Canada have adopted the AMPs system for handling parking ticket disputes.

[3] Law Reform Commission of Saskatchewan, *Administrative Penalties – Final Report*, pg.2.
[4] Law Commission of Ontario, *Modernization of the Provincial Offences Act – Final Report,* August 2011, pg 8

7.1.1 Vaughan

172. The City of Vaughan issues approximately 40,000 parking tickets annually.

173. It introduced an administrative monetary penalty system to deal with parking infractions in August 2009.

174. Under the previous court-based system, residents were required to appear in person at a first attendance facility to file a trial request. The first attendance facility had the authority to cancel tickets, but did so infrequently.

175. Vaughan decided to switch to an AMPs process because trials under that system were delayed three to four years.

176. Under their AMPs system, the ticket holder may make an appointment with a screening officer by phone or in-person. Such meetings are held from 12-8pm on Mondays and Tuesdays and 8:30am- 4:30pm on Wednesdays. Thursday and Friday are 'walk-in' days for those with accessible parking tickets.

177. Screening officer meetings are held within three to six weeks. For out-of-town residents, the screening officer will conduct the 'meeting' by phone. The screening officer decision is provided at the meeting. He or she may affirm, reduce or cancel the ticket, or extend the time for payment on grounds prescribed in the by-law.

178. The hearing officer review, if requested, is scheduled at the conclusion of the screening officer meeting, and is held within a few weeks. Hearings are held on Tuesdays only, at 15 minutes intervals between 9 am and 4 pm. The parking enforcement officer is routinely there. Hearings are scheduled during the officer's work schedule to avoid overtime. Hearing officers may also affirm, reduce or cancel the penalty or extend the time for payment.

179. The screening and hearing officers use the same parking guidelines/regulations that were used under the old court system, except that they may now consider financial hardship.

180. The Managing Supervisor, Enforcement Services advised that it took some time to set up the IT system needed to support the AMPs system.

181. Both the Director and the Managing Supervisor advised that they are very pleased with how the AMPs system has worked. Costs have been reduced. Disputes are dealt with expeditiously. The proportion of tickets appealed to a screening officer was unchanged, but the number going on to the hearing officer has been reduced from 3.2% to 1.4% of tickets issued.

182. Revenues have increased by more than 10%.

7.1.2 Oshawa

183. Oshawa introduced an administrative penalty system in March 2011, to relieve pressure on over-burdened courts and to streamline the dispute process.

184. The City of Oshawa issues 35,000 to 40,000 tickets yearly.

185. Its system provides that ticket recipients may request a review by a screening officer within 21 days of receiving the penalty notice. Screening requests may be submitted by mail, email, fax or in-person. Screening reviews are held one day a week and are in-person. Oshawa is introducing a written screening process. The screening officer has the authority to cancel or reduce the penalty or extend the time for payment of the penalty.

186. A ticket recipient not happy with the screening officer's decision may request a hearing within 21 days of the date of the screening officer's decision. Hearings take place on one afternoon each month. The hearing is normally held on the next scheduled hearing date. The hearing officer must provide the ticket recipient, the Director, and the officer with an opportunity to be heard. The hearing officer may cancel, reduce or extend the time for payment of the penalty.

187. The process generally takes about six weeks to complete.

188. The Manager of By-laws advised that people seem to prefer this system because it is quicker and less formal.

189. He stated that it is too soon to tell whether it has affected revenues.

7.1.3 Vancouver

190. The City of Vancouver uses an administrative tribunal system to address parking ticket disputes generated by the 450,000 tickets issued annually.

191. The system was adopted in February 2011 after the provincial courts advised that they were no longer willing to accommodate the City's parking ticket trials. Trials were delayed two and a half years at that point. The court-based system was also considered costly and complex.

192. The administrative system provides that the resident may, within 14 days of receipt of the ticket, complete and submit a Dispute Request Form. Screening is graduated. A junior screener addresses straightforward errors that make the ticket invalid. A more senior screening officer then has the authority to cancel tickets for issues that are health related or 'where it is not in the best interests of the city.' The screening officer will consider the resident's

information and the enforcement officer's notes and may affirm the penalty or cancel the ticket. Screening is almost always done by telephone.

193. If the dispute is not resolved at this level, the resident may request an adjudication hearing. An adjudicator independently appointed by the Province is present for the hearing, which may be held in person, in writing or by phone.

194. The enforcement officer is not required to attend. Typically only the adjudicator and the disputant attend the hearing. The adjudicator may affirm the screening officer's decision or cancel the ticket. The adjudicator's decision is final.

195. Adjudication hearings are held three to four days per month. The process is completed in about three months.

196. The Supervisor of Parking Enforcement advised that the system is considered to be an improvement over the court-based dispute process.

197. The City was anticipating that there would be about 16,000 tribunal hearings per year. There have been fewer than 2,000 so far in 2012.

198. Revenues have increased and payments are received more quickly.

7.2 The City of Toronto's Position on AMPs

199. The City of Toronto has stated that it supports the use of AMPs for parking infractions, but believes it could be vulnerable to a court challenge, including under the *Charter of Rights and Freedoms* (Charter), and should not be adopted without first obtaining a decision on this issue from the Court of Appeal.[5] The City proposed that this be done by way of reference from the provincial Attorney General pursuant to section 8 of the *Courts of Justice Act*.

200. The City states that, if the AMPs scheme was adopted in Toronto and then struck down as unconstitutional, this could have a significant financial impact on revenues.

201. Staff reported to my investigator that Revenue Services is aware of the City's concern about a court or Charter challenge. The Director, RS, understood that the City believes there was a risk of a challenge and that the City did not wish to proceed until the Province had taken action to eliminate that risk.

[5] Law Commission of Ontario, *Modernization of the Provincial Offences Act*, August 2011, pg. 73.

202. The Manager said that he understood the City also had some concerns about the possibility of a drop in parking ticket revenue under the AMPs system if it resulted in a greater number of ticket cancellations.

203. He said that Revenue Services explored the AMPs process as it is authorized by the *City of Toronto Act*, to consider what role it might play and how an AMPs scheme might affect operations. He said Revenue Services recognized that there had to be a clear delineation between the screening officer, who would determine if the ticket was "cancellable on its face," and the hearing officer, who might operate under the auspices of Court Services.

204. The Director, CS, stated that Court Services also did an internal assessment of the potential cost, operating needs and metrics of an AMPs system for the City. He said it concluded that some refinement of the model prescribed by the *City of Toronto Act* and Regulation 611/06 would be required in order to implement the scheme.

> The volumes of parking tickets in Toronto required a different provincial regulation that would result in one administrative process for all parking tickets issued, including those over $100, and that also included a provision that supported effective collection.

205. He commented on the need to prescribe clear separation between the screening officer(s) and the hearing officer(s), to avoid a perception of conflict and ensure their independence.

206. The Director, CS, said that he does not believe parking ticket disputes belong in the courts. He would like to see the AMPs system adopted in Toronto.

> If we were to look at improving the customer experience and our service to the public, we would have more control over an administrative model. Council could decide how many screening officers they would want, how many hearing officers we could appoint. Council gets to determine hours of service, could we be open 7 days a week, night service, could we do more through technology? All of those opportunities would be available.

207. The Director of Prosecutions said that the AMPs process has not been used in a municipality with the volume of parking tickets that Toronto has. He is not convinced that its use in smaller municipalities indicates that it could operate successfully in Toronto and be an improvement over the present system.

> No other municipality in Ontario, in Canada and not many in North America or the world probably have as many parking

> tickets issued as the City of Toronto**.** The municipalities that have implemented some form of AMPS have been on a much smaller scale than ours…If we go to AMPS, it gets it out of the courts, it gets it into another system, but is it going to result in any fewer requests for hearings than there are requests for trials? That's the big issue for me…We're going with Fixed Fine. As I understood the original model that was proposed, it's basically a Fixed fine system for AMPs. You don't get to dispute the amount, you only get to dispute whether you parked illegally or not. So that's very much what we're trying to do with the Fixed Fine system.

7.3 The Law Commission of Ontario's View

208. In 2011, the Law Commission of Ontario (LCO) undertook a detailed review of the *Provincial Offences Act*. As part of this review, it considered the AMPs system as an alternative to the court process. The LCO assessed the arguments for and against the AMPs system; the AMPs system for parking infractions; its use in the City of Vaughan; the application of the Charter to an AMPs system, and the duty of fairness in AMPs.

209. In its report '*Modernization of the Provincial Offences Act* ', the LCO concluded that there is "a compelling case for the gradual shift towards greater use of AMPs throughout Ontario's offence-creating statutes."

210. It cites as benefits of the AMPs scheme:

- More timely processing of cases by screening and hearing officers
- Less time required by disputants
- Cost savings through both removal of court, prosecutor and officer over-time costs and less expensive screening and hearing officers
- Reduction in number of hearings/disputes
- Freeing up of the courts for more serious matters
- Public satisfaction.

211. The report addresses issues particular to the use of AMPs for parking infractions in Toronto. It concludes that tickets for parking illegally in designated disabled spots, should be included in the AMPs system and that this may be achieved by increasing the $100 fine limit in the regulation.

212. The LCO does not consider the fact that a significant volume of Toronto's parking tickets are issued to courier and delivery vehicles relevant to a decision to adopt and AMPs system.

213. It acknowledges that an appropriate IT system must be set up to allow the enforcement of the penalty system. The Ministry of Transportation does not at present have an IT system that would allow municipalities to directly report non-payment of AMPs.

214. In considering whether the AMPS scheme would attract the protections of the Charter, the LCO notes that the AMPs regulation is clear that the penalty imposed cannot be punitive and exceed the amount reasonably required to promote compliance[6]. Monetary penalties cannot exceed $100 and imprisonment is not a permitted penalty. [7]

215. The LCO concludes that the AMPs system prescribed by the *Municipal Act* and the *City of Toronto Act* does not offend the relevant sections of the Charter.

216. It also finds that the AMPs system affords procedural fairness to persons who are subject to a penalty.

217. The LCO refers to proportionality in its consideration of the appropriateness of using the court system to hear very minor offences such as parking infractions.

> Non-judicial adjudicators in Ontario deal with matters of fundamental importance to us, such as our human rights, our rights as tenants, our entitlement to social assistance and our ability to work and be licensed in a chosen profession. Yet, under our current POA regime, it is possible to get a trial before a justice to adjudicate upon a disputed $30 parking ticket…There remains something strikingly disproportionate with using justices of the peace and limited court resources for these very minor matters…We believe greater respect for the rule of law and the administration of justice would be achieved if court and judicial resources were reserved for more serious matters.

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[6] Law Commission of Ontario, *Modernization of the Provincial Offences Act*, August 2011, pg. 67.

[7] Section 9 of the regulation allows municipalities to file a certificate of default with Small Claims Court or Superior Court of Justice where a penalty is not paid. The certificate can be enforced as an order of the court. A person refusing to abide by enforcement proceedings could conceivably be incarcerated for contempt of court after a further contempt hearing. The incarceration would be for failure to abide by an order of the court rather than because of a failure to pay the penalty.

218. In its August 2011 report, the LCO recommends, in part, that, within three years, an AMPs process for parking infractions be put in place in each municipality (or jointly with other municipalities), and that prosecution of parking offences be removed from the Ontario Court of Justice.

8.0 Ombudsman Conclusions

219. Many Toronto residents are not happy with the City's parking regulation process.

220. That is no surprise. Persons will inevitably be unhappy when they receive parking tickets. This does not indicate that there is a problem with the system.

221. The City must manage traffic flow. This requires that parking be regulated.

222. In a city the size of Toronto, the sheer volume of tickets that need to be managed makes this a challenge. In addition to issuing tickets, its parking regulation system must provide customer service that responds to queries that can be addressed administratively, and access to a system that accommodates legitimate disputes.

223. Toronto's parking dispute process accommodates these procedural requirements within the confines of current resources. I understand that the City is taking steps to improve accessibility and service.

224. There are ways, however, that the existing system could be further enhanced.

8.1 Inadequate Information Available

225. The City's information sites do not at present provide adequate information about the options available to those with concerns about parking tickets. The system would be improved by providing more complete and accessible information about the circumstances in which tickets may be cancelled through administrative means.

8.1.1 Parking Infraction Notice

226. The reverse side of the parking ticket purports to advise of the options available to respond to the ticket. It does not do this in as balanced or complete a way as it could.

227. The visual layout of the infraction notice emphasizes the payment option and downplays the trial option.

228. The payment information is set up in a wider, outlined section with a bold heading that states: '***You MUST CHOOSE one of the following options***:' It

is immediately followed by Options 1 and 2, which state how and where to make a payment, all within the boxed section.

229. Option 3, the trial option, is entirely outside the outlined section, in narrower text underneath.

230. The impression given is that the recipient must choose one of the first two payment options.

231. The trial information need not be highlighted, but it should be as accessible as the payment information. Persons wishing a trial will still be required to attend a FAF to file a Notice of Intention to Appear.

232. The ticket does not provide adequate information about the range of assistance available to recipients. It is not apparent that anything other than the payment and trial options exist, and that tickets are cancellable, and are cancelled, through other means.

- The City's website address is given only in connection with the 'Payment Online' feature.
- The only reference to 'dispute' is in connection with a trial.
- The ticket makes no reference to other forms of assistance available to recipients, such as the 'discuss your concerns' assistance described on the website, the email/fax system, or the Guidelines.
- The information about the TAGS number at the bottom of the ticket does not properly explain the extent of assistance that is available through this avenue.
- There is no indication that there is a screening process available to identify and deal with those tickets that will not result in a conviction, and that this process may be accessed by email and through TAGS.

233. I acknowledge that there is limited space on the ticket and there is a considerable amount of information that is required by law to appear. I also recognize that neither Revenue Services nor Court Services have the final say about the design of the ticket, which is the purview of the Toronto Police Service**.**

234. Consideration should be given, however, to supplementing the information that currently appears on the reverse of the infraction notice. Since the tickets are in the process of being re-designed, this would be an appropriate time to provide input.

8.1.2 Website

235. The City's website highlights the parking ticket payment option over the dispute option.

236. The City's opening webpage features 'pay a ticket' as an option under 'Living in Toronto.' One must proceed beyond the payment information to find reference to the 'disputing your ticket' option, where it is listed seventh in a list of nine, following four payment options of various types, defaulted fines and plate denial.

237. The 'disputing your ticket' webpage is devoted almost entirely to the trial. Its detailed explanation of all facets of the trial gives the impression that 'disputing' means going to court. The only reference to raising concerns in any other way appears at the bottom of the page, where it states that one may 'discuss concerns' with a counter staff member at First Appearance Facilities.

238. There are some omissions and errors in the website information.

239. The email/fax process for submitting concerns or disputes is described on the 'Pay Toronto Tickets' page as "a new parking ticket dispute process that will make it easier to dispute a ticket for meter and/or pay and display machine offences." There is no indication, however, that a range of other concerns can be submitted through this portal, including issues supported by documentation, from persons with a disability, or those who live more than 100 kilometres outside Toronto.

240. I note that the 'your day in court' webpage incorrectly states that all parking ticket trials are held at the 1530 Markham Road courts.

241. The statement on the 'Scheduling a trial date' page, that payment of the fine must be made at least three weeks in advance of the trial date, and is only permitted in extreme circumstances, is incorrect.

8.1.3 Guidelines

242. The City has not made the Guidelines sufficiently accessible.

243. The information received by my office indicates that the public is unaware of them. Even those who know the parking system well may not know that Guidelines exist.

244. I note that the 'Pay Toronto Tickets' page contains a link to the Guidelines. However, since the information in the Guidelines relates more to what the

public would consider a dispute, it would be appropriate to also include a link on the ‘Parking Ticket Disputes’ page.

245. In addition, it would be reasonable to add a separate webpage dedicated to the Guidelines, which more fully explains that tickets are cancellable in a number of circumstances, without attendance in court, and that one may discuss these matters with a City staff person.

246. A copy of the Guidelines should be available for review by the public at First Appearance Facility locations. If Revenue Services is concerned that copies will disappear, there are other ways to make them available, such as providing a secured copy, a version online, or a sign advising that a copy is available for review at the wickets.

8.2 Inadequate Process

247. The current system focuses on two groups – those paying their ticket and those with a dispute that require a trial.

248. While I realize these groups constitute the vast majority, the system does not in my view adequately recognize or serve recipients who have questions, concerns or disputes, but who do not need a trial to address those concerns.

8.2.1 First Appearance Facilities

249. The introduction to the Guidelines states,

> Staff review each disputed ticket individually and the evidence presented by the person who received the ticket, or their representative, to understand the nature of the infraction, and the circumstances surrounding the ticket issued.

250. FAF staff do not initiate discussion with ticket recipients about their dispute issue(s).

251. Should the staff person only address the issue that has brought the ticket recipient to the FAF if the latter chooses to raise it, it seems likely that some cancellable tickets are proceeding to trial.

252. I recognize that there are some ticket recipients who pass through the system regularly who are very familiar with the process and simply wish to submit a trial request.

253. I also appreciate that some recipients, such as courier/delivery companies, are determined to take their cases to trial.

254. I further acknowledge that staff must remain impartial and mindful that their role is not to deliver legal or quasi-legal advice.

255. That said, it is the FAF counter staff that know the parking guidelines and regulations well. The general public does not.

256. FAFs could conduct a more proactive screening of individual recipients where they appear to be unfamiliar with the system by determining, when possible and appropriate, whether the matter at issue is covered by the Guidelines.

257. The value of this process is heightened when the court system is unable to deal with the volume of trial requests.

8.2.2 In-person Requirement

258. The *Provincial Offences Act* provides that a person who intends to appear in court to dispute a parking infraction notice must give notice of that intention in person at the place specified on the infraction notice.

259. The stated rationale for this requirement is that there is a benefit to ensuring that the recipient understands the basis for the ticket and does in fact need to have the matter considered by the court.

260. In Toronto, the place specified to file a Notice of Intention to Appear is the First Appearance Facilities.

261. Based on the information gathered in this investigation, the wait times at these locations are reasonable and acceptable.

262. I agree that there is a purpose in requiring direct contact with a recipient who questions the fairness or legitimacy of the ticket.

263. However, it is important to recognize that the in-person attendance requirement under the *Provincial Offences Act* applies only to a recipient who wishes to request a trial. It is not necessary that all communication with a disputant be in-person.

264. I note that Revenue Services is making increasing use of email/fax and telephone contact to explore ticket issues raised by recipients, thus increasing efficiency.

265. These initiatives should be encouraged, so that screening is conducted as quickly and efficiently as possible, and an in-person appearance is required only where necessary to pursue the dispute or file a trial request.

8.2.3 The City's Use of the Term 'Dispute'

266. Some confusion is created in the present system by the use of the term ‘dispute’.

267. Revenue Services has stated that the City is not expected to handle ‘disputes’ as such, as that is a function of the courts.

268. However, the term is regularly used in reference to cases handled by the City.

269. The email/fax process is described on the website as the City’s ‘new parking ticket dispute process’.

270. The introduction to the Guidelines states that one must attend a FAF to dispute a ticket, and goes on to say that staff review each disputed ticket and may cancel tickets pursuant to the Guidelines.

271. City staff themselves at times use the term 'dispute' in connection with matters dealt with under the Guidelines.

272. The screening process allows staff to deal with many concerns that the ticket recipient may well view as ‘disputes’.

273. Staff should be mindful of the potential for confusion surrounding this term when responding to ticket recipients’ enquiries.

8.2.4 Court Services

274. The courts have not had the capacity for several years to accommodate the current demand for parking ticket trials. The problem has been exacerbated in recent years by individuals seeking to ‘game’ the system and benefit from the capacity problem.

275. Court Services and Prosecution Services have endeavoured to work within these limitations. Given that all cases cannot be heard, it has not been unreasonable to prioritize cases.

276. Court Services recently increased the number of cases scheduled in each court so that more can be accommodated. The fact remains that a large proportion of those who wish to exercise their right to a trial have been deprived of that right.

277. This situation would not be tolerated for more serious offences.

278. The fixed fine system, the courier-delivery parking permit and the increased scheduling capacity in parking ticket courts together have the potential to markedly reduce the capacity challenge.

279. The City expects that the fixed fine system will reduce the number of trial requests from persons who do not intend to dispute their ticket and simply wish to have the fine reduced. This will in turn remove the incentive to request a trial in the hope that it will never be scheduled. The result may be that the remaining requests from persons who intend to actually dispute their ticket in court can all be accommodated on a more timely basis.

280. However, even if the courts were able to accommodate all requests for trial, there are persuasive reasons to consider adopting an administrative system.

8.2.5 AMPs

281. The AMPs system differs from the present court-based system in a number of significant ways.

282. The AMPs scheme is about compliance rather than punishment.

283. AMPs penalties are payable at the time of the infraction rather than only after the person is convicted.

284. The AMPs system does not draw on scarce court resources to deal with minor by-law infractions.

285. While it is not possible to know the cost of operating an AMPs scheme in a city the size of Toronto, it is clear that it would not require the City to cover the cost of court administration, prosecutorial staff or overtime for parking enforcement officers.

286. It is reasonable and necessary for a municipality to regulate parking. Nonetheless, if the system is inadequate and there is a better alternative, it would be prudent to examine that option.

287. There is evidence that AMPs systems that have been implemented in smaller jurisdictions have improved service and saved time and money. I acknowledge that AMPs has not been tested in a large municipality such as Toronto.

288. I note the City's position that it is risky to adopt the AMPs system in light of a potential court challenge.

289. It is open to the City, however, to address this concern by requesting that the Attorney General refer the matter to the Court of Appeal.

9.0 Ombudsman Recommendations

290. Taking into account the evidence gathered in this investigation, I am making the following recommendations.

1. That the City improve the service provided to the public under the current court-based process by:

   i. Consulting with Toronto Police Services, Transportation Services and Legal Services to expand and clarify the information that appears on the infraction notice;

   ii. Reviewing the information related to the process for disputing parking tickets that appears on the City website with a view to providing a clearer and more detailed explanation of assistance available through the TAGS line, the email/fax system, and First Appearance Facilities locations;

   iii. Allowing recipients, where possible, to submit issues and concerns for screening via email/fax, telephone, and mail;

   iv. Creating a separate “Parking Ticket Cancellation Guidelines’ webpage with an explanation of their function and how they may impact the ticket recipient, i.e., that tickets are cancellable in a number of circumstances, without attendance in court;

   v. Including a reference and link to the Guidelines on the ‘Disputing your Ticket’ webpage;

   vi. Making copies of the Guidelines available at First Appearance Facilities locations;

   vii. Expanding the screening performed at First Appearance Facilities to determine, where appropriate, whether the ticket recipient’s issue is one that can be addressed without attending court;

   viii. Proceeding with consideration of the Courier/Delivery parking permit;

   ix. Implementing the Fixed Fine System.

2. That, if the City continues to take the position that the administrative penalties system may be vulnerable to a court challenge, it request that the Attorney General of Ontario refer the matter to the Ontario Court of Appeal.

3. That the City report back to me on the status of its implementation of my recommendations by May 1, 2013.

10.0 The City's Response

Prior to finalizing my report, I notified the City of my tentative conclusions and recommendations and provided the City Manager with an opportunity to make representations, pursuant to section 172(2) of the *City of Toronto Act, 2006*.

Following discussions with City officials in which some matters were clarified, the City Manager responded in writing on November 13, 2012 (see Appendix A).

In that response, the City agreed with my findings and the recommendations.

(Original signed)

_____

Fiona Crean
Ombudsman
November 20, 2012

Appendix A

TORONTO

Joseph P. Pennachetti
City Manager

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November 13, 2012

Fiona Crean
Office of the Ombudsman, City of Toronto
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Dear Ms. Crean:

Further to your request, please find below the City's written response to your draft investigation report, dated October 23, 2012, entitled: *An Investigation of the Parking Ticket Dispute System in Toronto*. I appreciate having had the opportunity to review and provide comments on the draft report, and to have staff from Revenue Services, Court Services and Legal Services Divisions meet with you and your staff to review the draft and our preliminary comments in detail.

We agree with the findings as presented and the recommendations. Revenue Services, Court Services and Legal Services Division staff have reviewed the document in detail and our comments are noted below.

Including More Information on the Back of the Ticket

Staff agree with the Ombudsman's suggestions that the back of the parking ticket could include clearer information on the options available to parking ticket recipients and more information on how to dispute a ticket. However changes to the back of the ticket is governed by space limitations, the fact that the ticket is a regulated form, and that the final approval for the ticket content rests with Toronto Police Service. Staff agree that the pending re-design of the ticket is an appropriate time to provide input, and will provide input to the TPS during the redesign phase to incorporate as fully as possible the suggestions raised in the Ombudsman's report.

Website

We agree with the Ombudsman's comments regarding the clarity and ease of accessibility of parking ticket information on the City's website. We committed to correcting the errors/omissions on the City's parking ticket website pages immediately. We also identified that the current corporate initiative to redesign all City web pages is scheduled to take place over 2013, with the Revenue Services' web pages scheduled to be updated in Q4 of 2013. We have committed to the completion of this work by December 31, 2013.

3-1-1

With respect to the recommendation to report back to the Ombudsman's office on the implementation of these recommendations by May 1st, 2013, I am confident that all of the recommendations will be implemented by that date, with the exception of changes to the City's website which will be implemented by December 31, 2013.

Thank you again for the opportunity to provide input into the draft report.

Yours truly,

Joseph P. Pennachetti
City Manager